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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

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**JAN 19 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable Television  
Consumer Protection and Competition  
Act of 1992

MM Docket No. 92-259

Broadcast Signal Carriage Issues

Reply Comments to  
"Notice of Proposed Rulemaking"

Burnham Broadcasting Company, a Limited Partnership ("Burnham"), by its attorneys and pursuant to the Commission's Notice of Proposed Rule Making released on November 19, 1992, in the above-captioned proceeding ("NPRM"), hereby files its Reply Comments. These Reply Comments are timely filed in compliance with the schedule set forth in the NPRM.

Introduction

1. Burnham is a television group owner of network affiliated stations in the following markets: Honolulu, Hawaii (KHON-TV); Wailuku, Hawaii (KAIH-TV); Hilo, Hawaii (KHAW-TV); Green Bay, Wisconsin (WLUK-TV); Bakersfield, California (KBAK-TV); New Orleans, Louisiana (WVUE-TV); and Mobile, Alabama (WALA-TV). Accordingly, Burnham has a strong interest in the subject of this NPRM.

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2. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") provides that a television station's "market" shall be determined in the manner provided in Section 73.3555(d)(3)(i) of the Commission's rules, as in effect on May 1, 1991, but permits the Commission to include or exclude additional communities within a market upon written request. In the NPRM, the Commission notes that Section 73.3555(d)(3)(i) refers to Arbitron's Area of Dominant Influence ("ADI") market definition which Arbitron creates only for counties located in the continental United States. The Commission seeks comment on the appropriate market for other areas such as Hawaii and Alaska.

3. Burnham has television stations in Hawaii in which, like Alaska, Arbitron does not measure television markets. Accordingly, there is no "ADI" in either Hawaii or Alaska. These Reply Comments therefore focus on the appropriate definition of a television market in those states for purposes of implementing the 1992 Cable Act. Burnham believes that the Commission must provide a definition for television markets in Hawaii and Alaska in order to insure full implementation of the 1992 Cable Act in those states.<sup>1/</sup>

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<sup>1/</sup> These Reply Comments are intended to focus solely on the 1992 Cable Act and the rules to be promulgated thereunder.

### Discussion

4. Substantial rights of television stations under the 1992 Cable Act turn on the FCC's definition of a television market. Specifically, the signal carriage obligations of cable operators are premised on whether a particular commercial television station is local, i.e., whether it is in the same television "market" as a particular cable system. If the Commission does not define an appropriate "market" for Hawaii and Alaska, there is a risk that cable operators might refuse to honor the signal carriage requirements of the 1992 Cable Act in those areas. Thus, adoption of a definition is essential.

5. As the NPRM observes, each Arbitron ADI is a geographic survey area based on patterns of television viewing measured by Arbitron. Each county in the contiguous United States is assigned exclusively to one ADI. Since Arbitron does not measure television markets in either Hawaii or Alaska, there are no ADIs in those states. However, television markets in Hawaii and Alaska are surveyed by Nielsen, which has established equivalent areas called Designated Market Areas ("DMA's") in those two states. In fact, Honolulu is the 70th DMA.

6. The NAB's Comments in this proceeding, filed January 5, 1993 recognize the problem that exists for Hawaiian and Alaskan television stations. "It is NAB's understanding that Nielsen has established DMA's in [Alaska and Hawaii] which would appear to be logical starting points for defining the markets of Alaska and Hawaii stations." (See NAB Comments, page 11). Burnham supports

the position advanced by the NAB. Television stations in Hawaii and Alaska should not be penalized simply because the federal government selected one private vendor of surveying services which does not survey a particular market. If the Commission is going to rely upon commercial audience surveyors, there is no reason not to look to an alternative survey supplier such as Nielsen which covers markets not covered by Arbitron.

7. Nielsen's DMA designation is the practical equivalent of Arbitron's ADI designation in the continental United States. Thus, it would be appropriate for the Commission to use the DMA designation to define Hawaiian and Alaskan television markets in the absence of an ADI designation. Failure to do so would make the Commission's action totally arbitrary. The FCC is a federal agency with national authority and responsibility. The 1992 Cable Act and the new rules thereunder will have national reach and effect. At a minimum, if Arbitron is going to be looked to as the national arbiter of markets for purposes of the new national Cable Act rules, Arbitron should have the responsibility of surveying Hawaii and Alaska or the FCC should look to Nielsen as a supplementary qualified source at least for the television markets in Hawaii and Alaska.

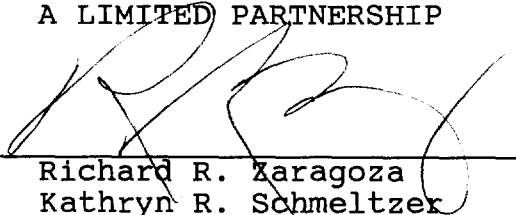
Conclusion

Based on the foregoing, Burnham Broadcasting Company, a Limited Partnership respectfully urges the Commission to determine the definition of a television market for purposes of the Cable Act legislation and its rules consistent with these Comments.

Respectfully submitted,

BURNHAM BROADCASTING COMPANY,  
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Dated: January 19, 1993

CERTIFICATE OF SERVICE

I, Susan R. Fisenne, hereby certify that I have this 19th day of January, 1993, mailed by first class United States mail, postage prepaid, copies of the foregoing "Reply Comments to "Notice of Proposed Rulemaking"" to the following:

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